STATE OF MICHIGAN

COURT OF APPEALS

JENISE SUZANNE WILLIS, f/k/a JENISE SUZANNE STEVENS, Plaintiff-Appellee,	UNPUBLISHED October 19, 2004
v	No. 254656 Kent Circuit Court
THOMAS SCOTT STEVENS, Defendant-Appellant.	LC No. 95-001972-DM

Before: Neff, P.J., and Smolenski and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from the order entered by Kent Circuit Judge Patricia D. Gardner granting plaintiff's motion for change of custody. We affirm.

I. FACTS

On March 1, 1996, a judgment of divorce was entered in this matter. Pursuant to the judgment of divorce, defendant was awarded sole physical custody of the minor children. On June 13, 2003, plaintiff moved for change of custody and for continuation of extended parenting time. Plaintiff, who was living out of state, stated that on May 30, 2003, she learned through relatives in Michigan that defendant was incarcerated for violating the terms of his probation. According to plaintiff, defendant had left the minor children in the care of Viola Stevens, his current wife, during his incarceration. Plaintiff stated that as the natural parent of the minor children, she was ready, willing, and able to provide for their needs. Plaintiff also alleged that defendant was continuing his pattern of "assaultive behavior."

On June 20, 2003, Circuit Judge Kathleen Feeney entered an order of reference, which provided that both parties stipulated that Referee Deborah McNabb would try the custody issue with no de novo review by the court. Following a hearing on August 12 and 13, 2003, the referee determined that plaintiff failed to present by clear and convincing evidence that a change in custody was warranted. Judge Feeney entered the referee's recommended order on August 26, 2003.

Plaintiff moved to vacate the above order pursuant to MCL 600.5080. Plaintiff argued that the award was adverse to the best interests of the children. Judge Gardner entered an order vacating the August 26, 2003 order, and scheduled the matter for a hearing on February 25,

2004.[1] Following the evidentiary hearing, the trial court found that plaintiff proved by clear and convincing evidence that a change of custody was warranted.

II. REVIEW OF REFEREE'S DECISION

Defendant contends that the trial court erred when it set aside the referee's decision. We disagree.

A. Standard of Review

Whether the parties to a divorce can by stipulation restrict the circuit court's authority to decide a custody issue is a question of law that this Court reviews de novo. *Harvey v Harvey*, 470 Mich 186, 191; 680 NW2d 835 (2004).

B. Analysis

Defendant contends that MCL 600.5080 clearly prohibits modifying or vacating arbitration awards. MCL 600.5080 provides:

> (1) Subject to section (2), the circuit court shall not vacate or modify an award concerning child support, custody, or parenting time unless the court finds that the award is adverse to the best interests of the child who is the subject of the award or under the provisions of section 5081.
>
> (2) A review or modification of a child support amount, child custody, or parenting time shall be conducted and is subject to the standards and procedures provided in other statutes, in other applicable law, and by court rule that are applicable to child support amounts, child custody, or parenting time.
>
> (3) Other standards and procedures regarding review of arbitration awards described in this section are governed by court rule.

"The primary rule of statutory construction is to determine and effectuate the intent of the Legislature through reasonable construction in consideration of the purpose of the statute and the object sought to be accomplished." *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998) (citations omitted). Where the statute is clear and unambiguous, judicial construction is precluded. *Id.* (citations omitted). MCL 600.5080(1) clearly provides that a circuit court can vacate a custody award if the court finds that the award is adverse to the best interests of the child or under the provisions of MCL 600.5081.[2]

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[1] It appears that from the lower court docket sheet that this case was reassigned to Judge Gardner due to judge unavailability.

[2] MCL 600.5081 provides:

(continued…)

Defendant further contends that MCL 600.5080(2) prohibits the vacating of an arbitration award because at the time the Legislature enacted the above statute, it was well aware of *Fletcher v Fletcher*, 447 Mich 871; 526 NW2d 889 (1994), where the Court directed that appellate courts were no longer allowed to review child custody decisions de novo. In *Fletcher*, a referee recommended that physical custody of the children be awarded to the defendant. *Id.*, 874. At the request of the plaintiff, the circuit court held a de novo hearing, and granted physical custody to the plaintiff. *Id.*, 875-876. The defendant appealed, and this Court reversed the custody determination, concluding that the circuit court made clearly erroneous findings of fact with regard to the best interests factors. *Id.*, 876. The issue on appeal was the determination of the proper standard of review in child custody cases. *Id.* The Court concluded that review of custody orders was not de novo. *Id.*, 882. Rather, the Court stated that findings of fact were to

(…continued)

> (1) If a party applies to the circuit court for vacation or modification of an arbitrator's award issued under this chapter, the court shall review the award as provided in this section or section 5080.
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> (2) If a party applies under this section, the court shall vacate an award under any of the following circumstances:
>
> (a) The award was procured by corruption, fraud, or other undue means.
>
> (b) There was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights.
>
> (c) The arbitrator exceeded his or her powers.
>
> (d) The arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.
>
> (3) The fact that the relief granted in an arbitration award could not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.
>
> (4) An application to vacate an award on grounds stated in subsection (2)(a) shall be made within 21 days after the grounds are known or should have been known.
>
> (5) If the court vacates an award, the court may order a rehearing before a new arbitrator chosen as provided in the agreement or, if there is no such provision, by the court. If the award is vacated on the grounds stated in subsection (2)(a) or (c), the award may order a rehearing before the arbitrator who made the award.
>
> (6) Other standards and procedures relating to review of arbitration awards described in subsection (1) are governed by court rule.]

Plaintiff did not cite MCL 600.5081 or address the four circumstances provided for in this statute in her motion to vacate. Rather, she cited only MCL 600.5080.

be reviewed under the "great weight" standard, discretionary rulings were to be reviewed for "abuse of discretion," and questions of law reviewed for "clear legal error." *Id.*, 877. While the Court stated that a review of custody order was not de novo, the Court did not prohibit the review of a custody order to determine if it was adverse to the best interest of the children. Thus, *Fletcher* does not support defendant's contention that MCL 600.5080 prohibits the modification or vacation of a custody order.

Pursuant to the plain language in MCL 600.5080, a court may vacate a custody award if the court finds that the award is adverse to the best interests of the child. However, in the case at hand, the parties stipulated that Referee McNabb would try the custody issue with no de novo review by the court. The question is whether the parties' agreement precluded the vacation of the award by Judge Gardner -- an issue that was recently addressed by our Supreme Court in *Harvey, supra*. In *Harvey, supra,* 187, the parties agreed that the friend of the court would determine the custody of their children and that the circuit court could not review the decision. Honoring this agreement, the circuit court entered the friend of the court's recommended order awarding sole custody to the defendant and denied the plaintiff's motion for a hearing to review the matter. *Id.* Our Supreme Court agreed with this Court that the parties could not stipulate to circumvent the authority of the circuit court in determining the custody of the children. *Id.*, 194. Although the Court affirmed this Court's opinion, it wrote to provide clarification. *Id.*, 187.

The Court stated that the Child Custody Act is a comprehensive statutory scheme for resolving custody disputes. *Id.*, 191 (citing *Van v Zahorik*, 460 Mich 320, 327; 597 NW2d 15 (1999)). The Court continued:

> With it, the Legislature sought to "promote the best interests and welfare of children." *Fletcher v Fletcher*, 447 Mich 871, 877; 526 NW2d 889 (1994). The act applies to all custody disputes and vests the circuit court with continuing jurisdiction. MCL 722.26.
>
> The act makes clear that the best interests of the child control the resolution of a custody dispute between parents, as gauged by the factors set forth at MCL 722.23. MCL 722.25(1). It places an affirmative obligation on the circuit court to "declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time in accordance with this act" whenever the court is required to adjudicate an action "involving dispute of a minor child's custody." MCL 722.24(1); *Van, supra* at 328. Taken together, these statutory provisions impose on the trial court the duty to ensure that the resolution of any custody dispute is in the best interests of the child. [*Harvey, supra*, 192.]

The Court concluded that parties could not stipulate to circumvent the authority of the circuit court in determining the custody of children. *Id.*, 194. The Court stated:

> Thus, even when parties initially elect to submit a custody dispute to an arbitrator or to the friend of the court, they cannot waive the authority that the Child Custody Act confers on the circuit court. As the Court of Appeals has previously explained, parties "cannot be agreement usurp the court's authority to determine suitable provisions for the child's best interests." *Lombardo v*

> *Lombardo,* 202 Mich App 151, 160; 507 NW2d 788 (1993). See also *Napora v Napora,* 159 Mich App 241, 246; 406 NW2d 197 (1986). Permitting the parties, by stipulation, to limit the trial court's authority to review custody determinations would nullify the protections of the Child Custody Act and relieve the circuit court of its statutorily imposed responsibilities. [*Harvey, supra,* 193-194.]

See also *In re Ford Estate,* 206 Mich App 705, 708; 522 NW2d 729 (1994), where this Court stated that a stipulation between the parties was not binding because "the parties to a civil matter cannot by their mere agreement supersede procedure and conditions set forth in statutes or court rules." (Citing *In re Estate of Meredith,* 275 Mich 278, 292; 266 NW 351 (1936)).

Based on the above case law, we conclude that the circuit court had the authority to review the order entered by Judge Feeney so as to determine whether it was adverse to the best interests of the children. Therefore, we need to address whether the trial court's findings with regard to the best interest factors were against the great weight of the evidence.

III. BEST INTEREST OF CHILDREN

A. Standard of Review

All custody orders must be affirmed on appeal unless the trial court's findings of fact were against the great weight of the evidence, the trial court committed a palpable abuse of discretion, or the trial court clearly erred on a question of law. *Fletcher, supra,* 876-877 (citing MCL 722.28). When a trial court is confronted with a petition to change custody, it must first determine the appropriate burden of proof to place on the party seeking the change. *Foskett v Foskett,* 247 Mich App 1, 5; 634 NW2d 363 (2001). "To discern the proper burden, the trial court's initial inquiry is whether an established custodial environment exists." *Id.* If the court finds that an established custodial environment exists, then it can only change custody if the party bearing the burden presents clear and convincing evidence that such a change served the best interests of the children. *Id.*, 6.

B. Analysis

In this case, the trial court found that there was an established custodial environment with defendant, and that plaintiff had to show by clear and convincing evidence that a change served the best interests of the children. Plaintiff contends that the trial court erred in finding an established custodial environment with defendant. However, plaintiff has failed to raise this issue in a cross appeal. Plaintiff's failure to cross appeal precludes this Court's review of this issue. *Barnell v Taubman Co, Inc,* 203 Mich App 110, 123; 512 NW2d 13 (1993) (citing MCR 7.207). Thus, we will discuss whether plaintiff met the clear and convincing burden of proof.

"Generally, a trial court determines the best interests of the child by weighing the twelve statutory factors outlined in MCL 722.23." *Eldred v Ziny,* 246 Mich App 142, 150; 631 NW2d 748 (2001). Those factors include:

> (a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(k) Domestic violence regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute. [MCL 722.23.]

"A trial court must consider and explicitly state its findings and conclusions with respect to each of these factors." *Foskett, supra*, 9 (citations omitted). However, the trial court need not comment on every matter in evidence or declare acceptance or rejection of every proposition argued. *LaFleche v Ybarra*, 242 Mich App 692, 700; 619 NW2d 738 (2000) (citations omitted).

Here, the trial court found that the parties were equal with regard to factor (c). The court also found that factors (a), (e), and (h) favored defendant, while factors (b), (d), (f), (g), (j), (k), and (l) favored plaintiff. Defendant has not challenged the decision on factor (f).

Defendant contends that the trial court's finding that defendant had only a slight advantage with regard to factor (a) is against the great weight of the evidence. The trial court stated that this was a case where both parents loved their children and where the children in turn loved both parents. The trial court found that because defendant had been the primary provider for the children for a number of years, he received a slight preference. Defendant argues that plaintiff failed to present any credible evidence about the emotional ties between herself and the children.

At the evidentiary hearing, plaintiff testified as to her parenting time with the children. Plaintiff explained how she saw the children in February, May, and December 2000. In 2001, the children visited plaintiff in Iceland. Plaintiff also saw the children in March and December 2002. Finally, in June 2003, plaintiff had the children for seven consecutive weeks.

Nancy Pawloski, plaintiff's mother, was asked about plaintiff's contact with the children, and she responded:

> When she was in Iceland, we had email and I'd always email her if [the children] were going to come on a Friday night, let her know because there was a time change, you know, like four hour difference so that she would know when they were going [to] arrive at my house. She'd call them. And then she'd call them the next morning when she got up and there was -- yeah, it was basically a good time for her because she was allowed to talk to them. Where a lot of times she would call their home and she wouldn't be able to talk to them.

Pawloski was also asked if plaintiff ever sent presents for the children, and she responded, "Oh yeah. Christmas presents and birthday presents."

A trial court's findings on each factor should be affirmed unless the evidence "clearly preponderate[s] in the opposite direction." *Fletcher, supra,* 879. Because the above evidence demonstrates that plaintiff had contact with, and showed affection to the children, we conclude that the trial court's findings that factor (a) only slightly favored defendant was not against the great weight of the evidence.

Defendant next contends that the trial court's finding regarding factor (b) that plaintiff had a higher propensity and ability to give the children guidance is "shocking" in light of the evidence presented. The court stated:

> [Defendant] has minimized and controlled people in his life through domestic violence and other behaviors. His behavior on December 5, 2003, encouraging Sean to call his mother, and say things that were clearly not the child's expression, but those of Mr. Stevens, indicates to the Court significant concern as to Mr. Stevens' guidance for the children.
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> The issue of guidance is significant. It's a significant responsibility that a parent bears.
>
> When I weigh this factor, I look at the history, but primarily at the parties' behavior and guidance from May or June of 2003, through the present, and I see that Ms. Willis has made far better decisions in trying to steer the children in an honest and appropriate way.

On December 5, 2003, the parties' son telephoned his mother and told her that he did not want to live with her. Defendant acknowledged that he told his son what to say. Thus, evidence was presented supporting the trial court's finding that defendant did not provide appropriate guidance to his children.

We acknowledge that there was testimony regarding concerns over plaintiff's parenting skills when the parties were married. However, the trial court expressly stated that it was considering the parties' behavior from May 2003 to present. Plaintiff was asked if there was domestic violence in her current home, and she responded, "No." She was also asked:

Q. Mr. Stevens ever raise that allegation?

A. No.

Q. Has he ever expressed a concern to you that you and Will beat each other up in front of the kids?

A. No.

Q. Will ever call you a slut and a whore --

A. No.

We believe that the above testimony indicates that plaintiff was trying to "steer" her children away from the domestic violence by wanting them to live in a home that did not have such behavior. Thus, we cannot conclude that the trial court's finding on this factor was against the great weight of the evidence.

Defendant next contends that the trial court erred in finding that the parties were equal with regard to factor (c). The trial court gave no preference with regard to this factor, reasoning that each party was able to provide the children with food, clothing, and medical care. Defendant argues that the trial court focused only on the capacity of the parties, and ignored the disposition of the parties.

Testimony revealed that the children had been in defendant's care since the parties' divorce, and that he provided for the children's needs. Thus, the trial court's finding that defendant was able to provide for the children was not against the great weight of the evidence. The question, then, is whether the trial court's finding that plaintiff was also able to provide for the children was against the great weight of the evidence.

Plaintiff was asked if she had sent any money to help with the children's medical expenses, and she stated that she had sent over $1,000. Plaintiff was further asked:

Q. Has Mr. Stevens ever contacted you and demanded money for medical payments?

A. Yes.

Q. And what did you do in response?

A. I told him I would get money to him what I could.

Q. And did you?

A. Yes.

Willis, plaintiff's current husband, testified that he had informed defendant that the children could be enrolled in his military health insurance. Willis stated:

> Basically my message to him was twofold, that the children could be enrolled and have military benefits, because the military, because they are my stepchildren, considers them my dependents. So they would have all of the benefits that my wife and my other two children have as far as medical and dental. The other part of the message was that Mr. Stevens had to comply with all of the rules and regulations that went along with having those -- you know, his other two children enrolled in that. Because if for some reason he didn't comply with those rules, it would come back to affect my career.

Plaintiff was asked if she understood that if the children were placed with defendant, she would have to pay child support, and she responded, "Yes." Plaintiff was also asked if she had a problem with that, and she stated, "No."

Based on the above testimony, we conclude that the trial court's finding of no preference with regard to this factor was not against the great weight of the evidence because the evidence demonstrated that both parties either provided for, or were willing to provide for the children's needs.

Defendant next contends that the trial court erred in giving preference to plaintiff on factor (d). While the trial court looked at the eight years that the children had primarily lived with defendant, it stated that it could not make a finding that their environment had been stable. The trial court looked at the fact that the children had been in eight schools and that the household had had a significant history of domestic violence. For these reasons, the trial court also found that the environment was not satisfactory.

Defendant testified that the children had attended eight different schools while in his custody. Defendant also testified that he "smashed" a telephone, pushed his current wife, and held a fork to his current wife's throat. Thus, we find that the trial court's finding that defendant's home was not stable due to constant moves and domestic violence was not against the great weight of the evidence.

The trial court also found that plaintiff's environment was far more stable and satisfactory. The trial court did not state any reasons for finding that plaintiff's home was more stable. The record reveals that after the parties were divorced, plaintiff moved to Alabama and then to Georgia. Plaintiff testified that she had been living at Kirtland Air Force Base in New Mexico for one year and five months. According to plaintiff, she would be living in New Mexico for another two and a half years. Before being stationed in New Mexico, plaintiff's current husband was stationed in Iceland for two years.

Although the trial court looked at the fact that while in defendant's care the children had been in eight different schools, the trial court did not comment on plaintiff's various moves. Defendant's moves were all within Kent County, while plaintiff's moves were not only cross-

county, but international. Nevertheless, we believe that the trial court's finding that plaintiff's environment was more stable was not against the great of the evidence.

Defendant next contends that the trial court erred in giving preference to plaintiff on factor (g), the mental and physical health of the parties. The trial court found that the parties were both physically fit and able to provide for the children. The trial court continued:

> I do find, however, a preference for Ms. Willis in this case based upon Mr. Flood's recommendations that individual counseling occur with regard to what he characterizes as a significant domestic violence case.

Randy Flood, a counselor at the Fountain Hill Center for Counseling and Consultation, testified that after meeting with defendant, it was determined that defendant be assigned to the "domestic relationships group." Flood testified that defendant completed the twenty-six-week program. However, Flood recommended that he continue with some kind of program because defendant's problem was similar to alcoholism. Specifically, Flood stated that the "moment you put it on the shelf is the moment you're at risk of re-offending again or getting involved in re-drinking." Thus, we find that the trial court's preference of plaintiff on this factor was not against the great weight of the evidence.

Defendant next contends that the trial court should have found that factor (h) overwhelmingly favored him. We note that the trial court stated that it "would clearly give the preference to Mr. Stevens on this factor." Based on the court's statement, we believe that the court found that this factor overwhelmingly favored defendant. Thus, defendant's argument has no merit.

Defendant maintains that the trial court erred with regard to factor (i). While defendant acknowledges that he does not know what was stated in the conference between his children and the court, he argues that after raising his children for eight years, he is certain that neither child expressed a preference to live with plaintiff. The trial court gave no preference on this factor because the child expressed no preference or because the child was unable to state a basis for that preference.

This Court has stated that as a general rule, a trial court must state on the record whether the children were able to express a reasonable preference and whether their preferences were considered by the court. *Fletcher v Fletcher*, 200 Mich App 505, 518; 504 NW2d 684 (1993), rev'd on other grounds 447 Mich 871 (1994). In the case at hand, the trial court interviewed the children and stated that they either expressed no preference or were unable to state a basis for such a preference. Based on the above case law, we believe that the trial court did not err with regard to this factor.

Defendant next contends that the trial court erred in finding in favor of plaintiff on factor (j). The trial court gave a strong preference to plaintiff with regard to this factor. The trial court stated the following:

> I remain tremendously concerned about what happened on December 5, 2003, the judgment that went into encouraging a child to phone his mother and lie, to put words into that child's mouth.

It is manipulative, it returns the same thinking patterns of domestic violence with power and control.

Mr. Stevens' ability on the stand to accept responsibility was, in my opinion, abysmal. He tried to push it off onto Sean, that he didn't have to say those things, even though Mr. Stevens is his father, an adult, and was standing over him telling him what to say.

It goes right back to everything that is addressed in the domestic violence cycle.

Further, it was significant because Mr. Flood had been involved with Mr. Stevens at that point for three to four months; with noted progress, yet the December 5, 2003 incident certainly was a regression in this behavior.

There was substantial testimony regarding the incident where defendant had his son call plaintiff and tell her that he did not want to live with her. On the other hand, plaintiff was asked:

Q. Do you feel it's important for Tom to have a relationship with Rianne and Sean?

A. Yes.

Q. If the children were placed in your care, what would you do to facilitate that relationship?

A. They can phone -- they can call their dad. They can email their dad. They can write their dad, I have no problems with it. Nothing. Whatever he wants to do, I will work with him.

Based on the above testimony, we conclude that the trial court's preference of plaintiff with regard to this factor was not against the great weight of the evidence.

Regarding factor (l), defendant states that the trial court again focused on his lack of truthfulness. The trial court stated the following regarding this factor:

The last issue to be addressed by the Court is any other factor considered by the Court to be of relevance to a particular child custody dispute.

The Court would indicate if it has not been clearly addressed in my comments on the other factors. I have great concern about Mr. Stevens' lack of truthfulness while under oath in Court proceedings.

Certainly Mr. Stevens had every opportunity to make greater strides in the treatment of the domestic violence with Mr. Flood.

He lied under oath, in my opinion, to Referee McNabb.

He was not truthful and honest with Ms. Willis with regard to the children.

> He involved Sean in a tremendously destructive telephone call on December 5, 2003, and continued to display this bizarre lying behavior by approaching Ms. Willis's parents and saying it was his intent to divorce Viola, and that her church was a sham.
>
> It's really quite difficult to sort out when Mr. Stevens is telling the truth because of this pattern of being untruthful to police, testimony before the court, in minimizing his behavior to Mr. Flood, and involving the children in horrendously hurtful behavior.
>
> I just want to note that that has been a significant factor that I have noted as we have gone through these proceedings.

A trial court must explicitly state its findings and conclusions with respect to each of the factors. *Foskett, supra,* 9. This Court has stated that a trial court's failure to state a conclusion on each of the best interest factors is error requiring reversal. *Schubring v Schubring,* 190 Mich App 468, 470; 476 NW2d 434 (1991). Although the trial court did not state whether factor (l) favored defendant or plaintiff, it is clear from the above remarks that it found in favor of plaintiff on this factor.

To the extent that defendant is arguing that the trial court erred in considering his lack of truthfulness with regard to factors (f) and (l), this Court has stated that a single circumstance can be relevant to and considered in determining more than one of the factors. *Fletcher v Fletcher (After Remand),* 229 Mich App 19, 25-26; 581 NW2d 11 (1998). Thus, the trial court did not err in considering that this circumstance was relevant to multiple factors.

Defendant also argues that the trial court should have focused instead on the impact that this change in custody would have on the children. As discussed above, while the trial court must consider and explicitly state its findings and conclusions with respect to each of the factors, *Foskett, supra,* 9, it need not comment on every matter of evidence or declare its acceptance or rejection of every proposition argued, *LaFleche, supra,* 700. Therefore, the trial court was not required to comment on testimony that removal from defendant's home would have a big impact on the parties' son when it made its findings regarding this factor.

Based on its findings regarding the above factors, the trial court awarded physical custody of the children to plaintiff. We conclude that the trial court properly found that factors (b), (d), (f), (g), (j), (k), and (l) favored plaintiff, while factors (a), (e), and (h) favored defendant. Therefore, the trial court did not abuse its discretion in changing custody of the parties' minor children from defendant to plaintiff.

Affirmed.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Bill Schuette